

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0603
Retail Sales Tax
For The Tax Periods: 1996, 1997

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ISSUE

I. Retail Sales Tax – Responsible Officer Liability

Authority: IC 6-2.5-2-1, IC 6-2.5-2-2, IC 6-2.5-9-3, IC 6-8.1-5-1, *Indiana Department of Revenue v. Safayan*, 654 N.E.2d 270, 273 (Ind. 1995).

The Taxpayer disputes the determination that he had a duty to remit the company's retail sales tax.

STATEMENT OF FACTS

Taxpayer was assessed for retail sales taxes as a responsible officer. Taxpayer was listed as the Secretary and Treasurer of the corporation on the Business Tax Application (Form BT-1). The Business Tax Application was completed by Taxpayer and was signed by Taxpayer as Secretary and Treasurer. Several retail sales tax returns also bear Taxpayer's signature signed as Treasurer. More facts will be provided as necessary.

I. Retail Sales Tax – Responsible Officer

DISCUSSION

A gross retail (sales) tax is imposed on retail transactions made in Indiana. IC 6-2.5-2-1. While this sales tax is levied on the purchaser of retail goods, it is the retail merchant who must "collect the tax as agent for the state." IC 6-2.5-2-2. Individuals may be held personally responsible for failing to remit any sales tax. Pursuant to IC 6-2.5-9-3:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Pursuant to *Indiana Department of Revenue v. Safayan*, 654 N.E.2d 270, 273 (Ind. 1995): “ The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid”. In *Safayan*, the court also stated, “where the individual was a high ranking officer, we presume that he or she had sufficient control over the company’s finances to give rise to a duty to remit the trust taxes.” *Id.* “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid”. IC 6-8.1-5-1(b).

Here, Taxpayer stated that he only acted only as a part time consultant with the company. However, Taxpayer is listed on the BT-1 under the title of Secretary and Treasurer. Additionally, Taxpayer signed several Indiana Sales Tax Returns as Treasurer.

From the cited facts, the Department finds Taxpayer failed to show that he lacked sufficient authority or requisite control to give rise to a duty to remit trust taxes collected on behalf of the state.

FINDING

The Taxpayer’s protest is denied.